

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERELL ARMSTRONG,

Defendant-Appellant.

UNPUBLISHED

June 20, 2000

No. 210724

Wayne Circuit Court

Criminal Division

LC No. 97-002323

Before: Cavanagh, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Following a joint trial by separate juries, defendant was convicted, on an aiding and abetting theory, of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and his codefendant, James Quarles, was acquitted. Defendant was sentenced to twenty to forty years' imprisonment for the second-degree murder conviction to be served consecutive to a two-year term for the felony-firearm conviction. Defendant now appeals as of right. We affirm.

I

Defendant first argues that the jury verdict was against the great weight of the evidence and that he is entitled to a new trial. Defendant did not preserve this issue by moving for a new trial below and, therefore, we need not address the issue absent manifest injustice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999), citing *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Testimony of several eyewitnesses as well as defendant's statement to the police supported the verdict. The evidence suggests defendant and Quarles approached the victim when they saw him chasing two other young men. Defendant admitted handing Quarles the sawed-off shotgun he was carrying and telling Quarles to shoot the victim. Several eyewitnesses testified Quarles then shot and killed the victim. Although several witnesses testified defendant and Quarles were present at a friend's house on the date of the murder, the evidence did not clearly weigh in defendant's favor. From the evidence presented, the jury could reasonably determine that Quarles committed second-degree murder, defendant performed acts or gave encouragement that assisted the commission of the crime and

that defendant intended the commission of the crime or had knowledge that Quarles intended its commission at the time he gave aid and encouragement. The evidence likewise supported a finding that defendant aided and abetted in the commission of felony-firearm, by supplying Quarles the shotgun. See *People v Carines*, 460 Mich 750, 757-758; 597 NW2d 130 (1999); *People v Johnson*, 411 Mich 50, 54; 303 NW2d 442 (1981). Consequently, manifest injustice will not result from our failure to review this issue or to remand for a hearing on the issue.

II

Defendant next argues that the trial court abused its discretion in refusing to allow witness Rose Myles to testify at trial. We disagree. Defendant first requested that the trial court endorse Myles as a witness on the fourth day of trial. Defendant claimed Myles' testimony would bolster the testimony of an alibi witness. We review a trial court's decision to allow the late endorsement of a witness for an abuse of discretion. *People v Gadomski*, 232 Mich App 24, 32-33; 592 NW2d 75 (1998); *People v Canter*, 197 Mich App 550, 563; 496 NW2d 336 (1992). An abuse of discretion exists when the court's decision is so grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, and the exercise of passion or bias, or, stated differently, when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling. *Gadomski, supra* at 33; *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Here, defendant failed to comply with MCR 6.201(A)(1), and with the discovery order entered by the trial court, by disclosing that he intended to call Myles at trial. No explanation was offered for defendant's failure to disclose this witness. Moreover, Myles' testimony that she dropped off two acquaintances of defendant at a house where defendant claims to have been at the time of the murders and saw two Asian girls near the house would have been cumulative to other witnesses' testimony that the two acquaintances and the Asian girls were present at the house on the night in question. Therefore, we conclude that the trial court did not abuse its discretion in excluding Myles' testimony. See MCR 6.201(J).¹

III

Finally, defendant argues that he was denied a fair and impartial trial due to the alleged mischaracterization of a witness' testimony by the trial court and the prosecutor. Defendant did not object to the comments of the trial court and prosecutor at trial and, therefore, this issue is not preserved for appellate review. See *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994); *People v Cooper*, 236 Mich App 643, 650; 601 NW2d 409 (1999); *People v Sardy*, 216 Mich App 111, 117-118; 549 NW2d 23 (1996). Defendant has not established that he was prejudiced by the alleged errors such that the outcome of the lower court proceedings was affected. Any prejudice resulting from the prosecution's alleged improper statement could have been cured by a

¹ To the extent Myles, herself, could be considered an alibi witness, it was not error to exclude her testimony given defendant failed to comply with MCL 768.21(1); MSA 28.1044(1), which requires a defendant to notify the prosecution in writing of the names of alibi witnesses.

cautionary instruction. *Stanaway, supra* at 687; *Cooper, supra* at 650.

Accordingly, defendant is not entitled to a reversal of his convictions on the basis of this unpreserved issue. *Carines, supra* at 763-767, 774.

Affirmed.

/s/ Mark J. Cavanagh

/s/ David H. Sawyer

/s/ Brian K. Zahra